



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTI/166499

PRELIMINARY RECITALS

Pursuant to a petition filed June 03, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on June 30, 2015, at Milwaukee, Wisconsin. The record was held open post-hearing for 10 days for the Petitioner to submit additional information. No additional information was received. The record was closed on July 9, 2015.

The issue for determination is whether the agency properly issued a tax intercept to the Petitioner for an unpaid public assistance debt.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Destiny Cooper

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On December 5 and 8, 2008, the agency issued Child Care Overpayment Notifications and worksheets to the Petitioner at her address on 24th Place informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$3,765.18 for the period of June 1, 2008 – August 23, 2008 due to her failure to be an in approved activity for child care benefits. The notice also informed the Petitioner of a right to request a fair hearing by filing an appeal with the Division of Hearings and Appeals within 45 days of the date of the notice.
3. On February 3, 2009, March 3, 2009 and April 2, 2009, the agency issued dunning notices to the Petitioner at her address on 24th Place.
4. On May 6, 2009, the Petitioner submitted a Six Month Report Form (SMRF) to the agency. She reported her residence on 24th Place. She reported no other residence or mailing address.
5. On February 2, 2010, a payment of \$342 was applied toward the Petitioner's unpaid public assistance debt leaving a remaining balance of \$3,429.63. A notice of receipt of payment was issued by the agency to the Petitioner on February 3, 2010 to her address on 24th Place.
6. On December 3, 2014, the Petitioner contacted the agency to update her address.
7. On May 15, 2015, a notice of state tax intercept was issued to the Petitioner at her Port Washington Rd address.
8. On June 3, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, or overpayment of AFDC or childcare payments made incorrectly.

The Department of Children and Families must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The Petitioner testified that she did not receive the notices of overpayment, dunning notices or notice of receipt of payment sent to her in 2008, 2009 and 2010 because she was no longer living at 24th Place. She asserts that she should now be able to contest the overpayment determination. She concedes that she did not notify the agency when she moved from 24th Place sometime prior to the winter of 2008. She further concedes that she did not have her mail forwarded from 24th Place to her new address. She testified that she was required to move quickly for safety reasons.

The Petitioner provided no evidence to support her argument that she moved prior to December, 2008 from 24th Place. She filed a subsequent renewal with the agency in 2009 and listed 24th Place as her address. She did not file a change of address until 2014. If the Petitioner moved in 2008, it was the Petitioner's responsibility to update her address with the agency within 10 days of her move in 2008.

Without any evidence from the Petitioner, I must conclude that she was residing at the 24th Place address in 2008 and that the notices were properly mailed by the agency to that address.

Thus, she has had a prior opportunity for hearing on the merits of the overpayment, and did not use it. She did not file a hearing request to challenge that overpayment within the 45 day period. The petitioner does not get another opportunity to argue the validity of the overpayment decision here.

In addition, there is no jurisdiction if an appeal is untimely. In this case, the Petitioner's appeal was timely as to the tax intercept but untimely as to the merits of the overpayment.

CONCLUSIONS OF LAW

The agency properly issued a tax intercept to the Petitioner for an unpaid public assistance debt.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of September, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 24, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit